



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/755,218	01/12/2004	Jeffrey Berichon	078297/000001	1889
23380 7590 06/25/2010 TUCKER ELLIS & WEST LLP 1150 HUNTINGTON BUILDING 925 EUCLID AVENUE CLEVELAND, OH 44115-1414				
EXAMINER				
ROJAS, HAJIME S				
ART UNIT		PAPER NUMBER		
3627				
NOTIFICATION DATE		DELIVERY MODE		
06/25/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@tuckerellis.com

Office Action Summary

Application No.

10/755,218

Applicant(s)

BERICHON ET AL.

Examiner

HAJIME ROJAS

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 April 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/CD)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

The following is a Non-Final Office action in response to communications received April 30, 2010.

Claims 1-44 are pending and addressed below.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-44 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

Examiner maintains that Applicant was not in possession of the claimed invention at the time of the filing date. The limitation of "consolidation mode" as claimed in the independent claims, claims 1, 11, 21 and 31, is relevant to the embodiment of "Distribution Center Direct Shipment" and not to the embodiment "Pool Distribution Shipment". Support for this is found throughout the Specification of the present invention. For example, as stated in the last Office Action, see page 9 lines 32- page 10, line 12 which recite: "The present invention can be used in at least two points in the supply chain: (i) distribution center direct shipments and (ii) pool distribution shipments. In the distribution center direct model, goods are warehoused at a distribution center, customer orders are picked from inventory, and then delivered. A

diagram illustrating the distribution center direct model is shown in Figure 2. In the pool distribution model, goods are also warehoused at a distribution center; however, they are not delivered to the customer directly from the distribution center. Goods for multiple delivery points in a single geographic area are loaded on a tractor trailer at a shipper's distribution center, shipped to a secondary, usually independent, warehouse ("pool distribution point") where the goods are unloaded, sorted and segregated into single store orders. These orders are then shipped from the pool distributor to their ultimate delivery point. A diagram illustrating the distribution center direct model is shown in Figure 3." clearly indicating that these are two separate and different embodiments. Additionally, "consolidation mode" is described in detail under the section "Data Collection in the Distribution Center Direct Model Scan Points" as well as "Using the Distribution Center Direct Scan Application" (pgs 11-15) and not under "Data Collection in the Pool Distribution Model Scan Points" nor "Using the Pool Distribution Scanner Application" (pgs 17-23). Also, the capturing modes such as "consolidation stage, a grid area stage, a loading vehicle stage, a delivery stage or a pick up stage" (claim 2) are supported by the embodiment "distribution center direct shipment" and not under "pool distribution shipments".

Therefore, Examiner respectfully maintains that Applicant was not in possession of the claimed invention at the time of the filing date.

Dependent claims 2-10, 12-20, 22-30, 32-44 depend from claims 1, 11, 21 and 31 and do not cure the deficiencies set forth above.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Joyce et al. (US 2004/0153379 A1, hereinafter Joyce) in view of Waddington et al. (US 2002/0010661, hereinafter Waddington).

As per claims 1-44, Joyce shows all the limitations as claimed except for capturing modes.

Joyce discloses consolidating, shipping and distributing items comprising multiple orders to multiple customers (Abstract), wherein the sources and destinations of the orders are different and wherein the orders are consolidated at a distribution center (Figure 1. See also [paragraph][0049]-[0050]). Joyce also discloses managing the distribution of items either by scanning or manually input [0052]. Waddington teaches a delivery device which includes receiving user selections through capturing modes for

use in a distribution system (Figure 7, [0089], [0147]. See also Figures 36-39).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention as disclosed by Joyce and include the delivery device as taught by Waddington in order to automate as well as reduce manual errors in the invention as disclosed by Joyce.

Please Note: A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Response to Arguments

In response to arguments with respect to rejections under § 112 first paragraph, see above.

Applicant's arguments with respect to rejections under § 103 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HAJIME ROJAS whose telephone number is (571)270-5491. The examiner can normally be reached on EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Florian Zeender

can be reached on (571)272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/HAJIME ROJAS/
Examiner, Art Unit 3627

/F. Ryan Zeender/
Supervisory Patent Examiner, Art Unit 3627